

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

DON KING PRODUCTIONS, INC.,

Plaintiff

v.

CIVIL 06-1479 (JAG)

CAFETERÍA LA MARIANA, et al.,

Defendants

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff claims that various defendants exhibited its copyrighted boxing matches without the proper authorizations, in violation of 47 U.S.C. § 553, § 553(3)(A)(ii) and § 553(3)(B). Default was entered against co-defendants San Felipe Café, and Ana L. Cosme individually (Docket No. 63), the conjugal partnership Torres-Cosme, (Docket No. 60) El Chef del Sandwich, Luis Torres individually, and the conjugal partnership composed of Torres-Fulana de Tal, conjugal partnership composed of Torres-María Zambrana (Docket No. 63), El Gran Mangoito (Docket No. 37), Javier Colón individually and the conjugal partnership composed of Colón-Doe (Docket No. 63), El Refugio de Nan y Lilly, Nelly Lugo (Docket No. 37), the conjugal partnership composed of Lugo-Doe (Docket No. 63), the conjugal partnership González-Lugo (Docket No. 38), Cafetín La Marina a/k/a Cafetín Marina, Mónica Rodríguez individually, the conjugal partnership composed of Mónica Rodríguez and Mark Doe (Docket No. 38), La Barra el Limón a/k/a Limón Café a/k/a Barra & Restaurant Limón Café, Roberto Rivera individually, the conjugal partnership composed of Roberto Rivera and Mary

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3 Doe (Docket No. 37), Verde Luz Inn Restaurant, Alberto Ronda Vázquez
4 individually, the conjugal partnership composed of Alberto Ronda and Mengana
5 de Tal (Docket No. 38), La Hípica a/k/a Agencia Hípica 449, Macho Cintrón
6 individually, conjugal partnership of Cintrón-Doe, Héctor Torres individually and
7 conjugal partnership Torres-Doe (Docket No. 37), Colmado Barra & Club de
8 Dominó Los Amigos, Evelyn Santiago Quiñones individually, the conjugal
9 partnership composed of Evelyn Santiago Quiñones and Doe (Docket NO. 37), La
10 Cantina de Luis, conjugal partnership composed of Luis González González
11 individually. (Docket No. 38.)

12 Default having been entered, plaintiff moved for judgment by default. For
13 each establishment and set of defendants related to said establishment, plaintiff
14 filed an affidavit of an auditor who visited the place of business. The affidavits,
15 *inter alia*, detail the number of patrons counted, the number of television sets,
16 and which part of the copyrighted transmission was being exhibited. Plaintiff also
17 included a detailed declaration under penalty of perjury by its attorneys that
18 attested to the need for service of summons, the expenses incurred, and the time
19 invested in each case. Finally, plaintiff included a detail of the cost of the
20 summons for each defendant. After examining plaintiff's request for judgment by
21 default, its accompanying documents and the complaint, I render a report and
22 recommendation.

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Inasmuch as the aforementioned defendants are in default, this "constitutes an admission of all facts well-pleaded in the complaint." Metropolitan Life Ins. Co. v. Colón Rivera, 204 F. Supp. 2d 273, 274-75 (D.P.R. 2002) (citing Banco Bilbao Vizcaya Argentaria v. Family Restaurants, Inc., 285 F.3d 111, 114 (1st Cir. 2002)). Moreover, "[o]nce the entry of a default establishes the *fact* of damage, the trial judge . . . has considerable latitude in determining the *amount* of damages." Jones V. Winnepesaukee Realty, 990 F.2d 1, 4 (1st Cir. 1993).

Pursuant to 47 U.S.C. § 553(3)(A)(ii), the maximum amount for statutory damages is \$10,000. Pursuant to 47 U.S.C. § 553(3)(B), the court has discretion to increase this to the maximum statutory provision of \$50,000 if it finds the violation of copyright was willful and for commercial advantage or private gain. Courts may infer willfulness from defendant's failure to defend itself. See Fitzgerald Publ'g Co. v. Baylor Publ'g Co., 807 F.2d 1110, 1115 (2nd Cir. 1986); Century ML-Cable Corp. v. Díaz, 39 F. Supp. 2d 121, 125 (D.P.R. 1999). In Time Warner Cable of New York City v. Georgies Luncheonette, Inc., 77 F. Supp. 2d 485, 490 (S.D.N.Y. 1999), the court states, "[s]ignals do not descramble spontaneously, nor do television sets connect themselves to cable distribution systems." I thus find that defendants' violations were willful and for commercial advantage and warrant the maximum penalty, as well as maximum statutory damages.

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3 Plaintiff is also seeking reasonable attorneys' fees. Plaintiff's attorney is
4 Glenn Carl James. Mr. James has more than 15 years experience in federal
5 litigation. Therefore, an hourly fee of \$200 is not unreasonable. See Grendel's
6 Den, Inc. v. Larkin, 749 F.2d 945, 950-51 (1st Cir. 1984); Mountain Cable Co. v.
7 Choquette, 53 F. Supp. 2d 107, 114-115 (D. Mass. 1999).

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10 In light of the above, I recommend that the court make the following
11 specific findings as to each defendant:

12 1. According to the sworn statement of Mr. Jorge Berrios who visited
13 San Felipe Cafe, Ana L. Cosme individually, and c/p Torres-Cosme
14 d/b/a San Felipe Cafe's establishment on the day of the fight, there
15 were 40 persons viewing the fight in the establishment on one
16 television. The court awards plaintiff \$40,000 in damages, plus
17 \$2,200 in attorneys' fees and \$395 in costs; and orders San Felipe
18 Cafe, Ana L. Cosme individually, and c/p Torres-Cosme d/b/a San
19 Felipe Cafe's, to jointly and severally pay this amount to plaintiff,
20 pursuant to the judgment issued in this matter.

21 2. According to the sworn statement of Mr. Jorge Colon who visited El
22 Chef del Sandwich, Luis Torres individually, c/p Torres-Fulana del Tal
23 and conjugal partnership Torres-Zambrana d/b/a El Chef del
24 Sandwich's establishment on the day of the fight, there were 25

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persons viewing the fight in the establishment on one television. The court awards plaintiff \$25,000 in damages, plus \$2,200 in attorney's fees and \$460 in costs, and orders El Chef del Sandwich, Luis Torres individually, c/p Torres-Fulana de Tal and conjugal partnership Torres-Zambrana d/b/a El Chef del Sandwich, to jointly and severally pay this amount to plaintiff, pursuant to the judgment issued in this matter.

- 12 3. According to the sworn statement of Mr. Jorge Berrios who visited El
13 Gran Mangoito, Javier Colon individually, and conjugal partnership
14 Colon-Doe d/b/a El Gran Mangoito's establishment on the day of the
15 fight, there were 30 persons viewing the fight in the establishment on
16 one television. The court awards plaintiff \$30,000 in damages, plus
17 \$2,200 in attorney's fees and \$345 in costs, and orders El Gran
18 Mangoito, Javier Colon individually, and conjugal partnership Colon-
19 Doe d/b/a El Gran Mangoito, to jointly and severally pay this amount
20 to plaintiff, pursuant to the judgment issued in this matter.
- 21 4. According to the sworn statement of Mr. William Martinez who visited
22 El Refugio de Nan y Lilly, Nelly Lugo individually, conjugal partnership
23 Lugo-Doe and conjugal partnership Gonzalez-Lugo d/b/a El Refugio
24 de Nan y Lilly, establishment on the day of the fight, there were 18
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3 persons viewing the fight in the establishment on one television. The
4 court awards plaintiff \$20,000 in damages, plus \$2,200 in attorney's
5 fees and \$460 in costs, and orders El Refugio de Nan y Lilly, Nelly
6 Lugo individually, conjugal partnership Lugo-Doe and conjugal
7 partnership González-Lugo d/b/a El Refugio de Nan y Lilly, to jointly
8 and severally pay this amount to plaintiff, pursuant to the judgment
9 issued in this matter.

12 5. According to the sworn statement of Mr. Jorge Berrios who visited
13 Cafetín La Marina a/k/a Cafetín Marina, Mónica Rodríguez individually,
14 the conjugal partnership Rodríguez-Doe d/b/a Cafetín La Marina's
15 establishment on the day of the fight, there were 50 persons viewing
16 the fight in the establishment on one television. The court awards
17 plaintiff \$50,000 in damages, plus \$2,200 in attorney's fees and \$645
18 in costs, and orders Cafetín La Marina a/k/a Cafetín Marina, Mónica
19 Rodríguez individually, the conjugal partnership Rodríguez-Doe d/b/a
20 Cafetín La Marina's, to jointly and severally pay this amount to
21 plaintiff, pursuant to the judgment issued in this matter.

22 6. According to the sworn statement of Mr. Jorge Berrios who visited La
23 Barra el Limón a/k/a Limón Café a/k/a Barra & Restaurant Limón
24 Café, Roberto Rivera individually, the conjugal partnership Roberto
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3 Rivera-Mary Doe a/k/a La Barra el Limón's establishment on the day
4 of the fight, there were 45 persons viewing the fight in the
5 establishment on two televisions. The court awards plaintiff \$45,000
6 in damages, plus \$2,200 in attorney's fees and \$395 in costs, and
7 orders La Barra el Limón Café a/k/a Barra & Restaurant Limón Café,
8 Roberto Rivera individually, the conjugal partnership Roberto Rivera-
9 Mary Doe d/b/a La Barra el Limón, to jointly and severally pay this
10 amount to plaintiff, pursuant to the judgment issued in this matter.

13 7. According to the sworn statement of Mr. William Martínez who visited
14 Verde Luz Inn Restaurant, Alberto Ronda Vázquez individually, the
15 conjugal partnership constituted by Alberto Ronda Vázquez and
16 Mengana de Tal d/b/a Verde Luz Inn Restaurant's establishment on
17 the day of the fight, there were 30 persons viewing the fight in the
18 establishment on two televisions. The court awards plaintiff \$30,000
19 in damages, plus \$2,200 in attorney's fees and \$395 in costs, and
20 orders Verde Luz Inn Restaurant, Alberto Ronda Vázquez individually,
21 the conjugal partnership constituted by Alberto Ronda Vázquez and
22 Mengana de Tal d/b/a Verde Luz Inn Restaurant, to jointly and
23 severally pay this amount to plaintiff, pursuant to the judgment
24 issued in this matter.

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3 8. According to the sworn statement of Ms. Damaris Cintrón who visited

4 La Hípica a/k/a Agencia Hípica 449, Macho Cintrón individually,

5 conjugal partnership of Cintrón-Doe, Héctor Torres individually and

6 conjugal partnership Torres-Doe d/b/a La Hípica a/k/a Agencia Hípica

7 449's establishment on the day of the fight, there were 58 persons

8 viewing the fight in the establishment on one television. The court

9 awards plaintiff \$58,000 in damages, plus \$2,200 in attorney's fees

10 and \$530 in costs, and orders La Hípica a/k/a Agencia Hípica 449,

11 Macho Cintrón individually, conjugal partnership of Cintrón-Doe,

12 Héctor Torres individually and conjugal partnership Torres-Doe d/b/a

13 La Hípica a/k/a Agencia Hípica 449, to jointly and severally pay this

14 amount to plaintiff, pursuant to the judgment issued in this matter.

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16 9. According to the sworn statement of Ms. María del C. Caraballo who

17 visited Colmado Barra & Club de Dominó Los Amigos, Evelyn Santiago

18 Quiñones individually, the conjugal partnership Evelyn Santiago

19 Quiñones-Doe d/b/a Colmado Barra & Club de Dominó Los Amigos on

20 the day of the fight, there were 20 persons viewing the fight in the

21 establishment on one television. The court awards plaintiff \$20,000

22 in damages, plus \$2,200 in attorney's fees and \$395 in costs, and

23 orders Colmado Barra & Club de Dominó Los Amigos, Evelyn Santiago

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3 Quiñones individually, the conjugal partnership Evelyn Santiago
4 Quiñones-Doe d/b/a Colmado Barra & Club de Dominó Los Amigos,
5 to jointly and severally pay this amount to plaintiff, pursuant to the
6 judgment issued in this matter.

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8 10. According to the sworn statement of Mr. Edgardo Rivera who visited
9 La Cantina de Luis, conjugal partnership González González-Doe, and
10 Luis González González individually on the day of the fight, there were
11 200 persons viewing the fight in the establishment on one television.
12 The court awards plaintiff \$60,000 in damages, plus \$2,200 in
13 attorney's fees and \$395 in costs, and orders La Cantina de Luis,
14 conjugal partnership González González-Doe, and Luis González
15 González individually, to jointly and severally pay this amount to
16 plaintiff, pursuant to the judgment issued in this matter.
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19 In view of the above, I recommend that the court enter judgment as
20 detailed.
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22 Under the provisions of Rule 72(d), Local Rules, District of Puerto Rico, any
23 party who objects to this report and recommendation must file a written objection
24 thereto with the Clerk of this Court within ten (10) days of the party's receipt of
25 this report and recommendation. The written objections must specifically identify
26 the portion of the recommendation, or report to which objection is made and the
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3 basis for such objections. Failure to comply with this rule precludes further
4 appellate review. See Thomas v. Arn, 474 U.S. 140, 155 (1985); Davet v.
5 Maccorone, 973 F.2d 22, 30-31 (1st Cir. 1992); Paterson-Leitch Co. v. Mass. Mun.
6 Wholesale Elec. Co., 840 F.2d 985 (1st Cir. 1988); Borden v. Sec'y of Health &

7 Human Servs., 836 F.2d 4, 6 (1st Cir. 1987); Scott v. Schweiker, 702 F.2d 13, 14
8 (1st Cir. 1983); United States v. Vega, 678 F.2d 376, 378-79 (1st Cir. 1982); Park
9 Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603 (1st Cir. 1980).

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11 At San Juan, Puerto Rico, this 17th day of July, 2007.

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14 S/ JUSTO ARENAS
15 Chief United States Magistrate Judge
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